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Promotion of truth, justice, reparation and guarantees of non-recurrence*

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, in accordance with Human Rights Council resolution 27/3.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

Summary

In the light of the ongoing reform initiatives of the United Nations to place prevention at the centre of the Organization's work, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence proposes the development of a substantive, comprehensive framework approach to prevention, some elements of which he outlines in the present report.

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I. Introduction

1. In 2015, as part of a series of reports on each of the pillars of his mandate, the Special Rapporteur presented to the Human Rights Council and the General Assembly two reports on the (not so frequently employed) notion of guarantees of non-recurrence (A/HRC/30/42 and A/70/438). In those reports, he argued that the best way to understand the notion of guarantees of non-recurrence was in terms of prevention, and attempted to shed light on some of the conceptual difficulties that characterized the notion, as well as to give some structure to the discussions about such guarantees in practice.

2. In the meantime, interest in prevention has picked up strongly, not least as a result of the emphasis the new Secretary-General has placed on it. In his first briefing to the Security Council, the Secretary-General observed: "We spend far more time and resources responding to crises rather than preventing them. People are paying too high a price ... We need a whole new approach", and proceeded to state that for him: "Prevention is not merely a priority, but the priority."[1]

3. In that same briefing, the Secretary-General highlighted the link between prevention, human rights and sustainable peace: "Upholding human rights is a crucial element of prevention" and "Human rights are intrinsically linked to sustaining peace." This interest in the links between prevention, human rights and sustainable peace was not a one-off event. In fact, the Secretary-General had already introduced the topic in his first statement to the Human Rights Council, where he argued that the Universal Declaration of Human Rights — and the treaties that derived from it — were "perhaps the best prevention tool we have", noting that the "rights set out in it identify many of the root causes of conflict, but equally they provide real world solutions through real change on the ground".[2]

4. The present report is meant as a contribution to the ongoing discussions about prevention. In it, the Special Rapporteur argues in favour of a framework approach to prevention from the perspective of a mandate concerned with the promotion of human rights in situations in which such rights have been massively violated. A framework approach will contribute to breaking existing silos of knowledge and expertise, which hamper effective preventive work, and will help to widen the scope and to "upstream" prevention (something as frequently praised as it is rarely practised) in a systematic and orderly way. In this sense, the approach is a planning tool that also has the potential to shed light on important links between prevention, human rights and sustaining peace.

II. Prevention in the United Nations system

5. The emphatic focus of the Secretary-General on prevention, in addition to his efforts to highlight its links with human rights, has been broadly welcomed. Of course, an interest in prevention — broadly defined — is not new to the United

[1] See remarks of the Secretary-General to the Security Council open debate on "Maintenance of international peace and security: conflict prevention and sustaining peace", 10 January 2017. Available from www.un.org/sg/en/content/sg/statement/2017-01-10/secretary-generals-remarks-security-council-open-debate-maintenance.

[2] See remarks of the Secretary-General to the Human Rights Council, 27 February 2017. Available from www.un.org/sg/en/content/sg/speeches/2017-02-27/secretary-generals-human-rights-council-remarks.

Nations system. This is not the place for a full history of the system's use of the term, but the account below captures some of the key points in that trajectory.[3]

6. Within the United Nations system, most observers hearken back to Secretary-General Boutros Boutros-Ghali's 1992 "An agenda for peace: preventive diplomacy, peacemaking and peacekeeping" (A/47/277-S/24111) as the document that started the trend. Recognizing the limits of militarized peacekeeping and with the aim of expanding the toolbox of preventive mechanisms, that document broke new ground in raising the profile of preventive diplomacy and articulating a new space for post-conflict peacebuilding.[4]

7. In his 1999 report on the work of the Organization, Secretary-General Kofi Annan advocated strongly for United Nations Member States, the Secretariat of the United Nations and United Nations entities to take early prevention seriously and to address underlying causes, pointing out that societies afflicted by war typically also suffered from inequality among ethnic, religious or other social groups, the deliberate mobilization of grievance, and struggles over control of economic resources, all of which needed to be addressed over the long term. The Secretary-General pressed for the building of a substantive culture of prevention within the United Nations and advocated for removing "the institutional barriers to building cross-sector cooperation that is a prerequisite of successful prevention" (see A/54/1, introduction). Despite subsequent efforts to achieve the desired coordination, significant work remains to be done.

8. The final major influence on conflict prevention during this early period was Secretary-General Annan's first report on the prevention of armed conflict in 2001. In that report, he reiterated that prevention was the business of the whole United Nations system, arguing that the main responsibility for prevention rested with Member States and their civil society, with outsiders, including United Nations entities, as facilitators and not drivers. Significantly, he argued that prevention and development went hand in hand (A/55/985-S/2001/574 and A/55/985/Corr.1-S/2001/574/Corr.1).

9. Work on prevention, particularly the prevention of conflict, was taking place not merely at the conceptual level, but also at the operational level.[5] Examples included the United Nations Interagency Framework Team for Preventive Action, which became operational in the early 2000s when full-time staff were assigned to it (although the Framework itself had existed since 1995). Started originally as an informal mechanism for the Department of Political Affairs, the Department of Peacekeeping Operations and the Office for the Coordination of Humanitarian

[3] For a detailed description of existing prevention structures, see Vincenç Fisas, *La Gestión de las Crisis Sociopolíticas* (Barcelona, Institut Català Internacional per la Pau, 2017).

[4] The genocidal atrocities in Rwanda and Bosnia in the early 1990s galvanized the international community's search for more effective prevention tools. The Carnegie Commission's *Preventing Deadly Conflict* report broadened the landscape of potential preventive interventions, introducing the influential distinction between "operational prevention" (measures applicable to the immediate crisis phase) and "structural prevention" (measures targeting root causes and aimed at ensuring that crises do not arise in the first place or, if they do, that they do not recur). That report has loomed large in discussions about prevention in the United Nations, but not always sufficiently in practice. (See Carnegie Commission on Preventing Deadly Conflict, *Preventing Deadly Conflict: Final Report* (New York, Carnegie Corporation of New York, 1997)).

[5] "Prevention" has always had an ambiguous meaning both within and outside the United Nations system. While most of the work of the United Nations on prevention has focused mainly on the prevention of conflict (itself a porous concept), the term prevention is also used to refer to threats to international peace and security, violent conflict, violent extremism, violence generally, human rights violations, humanitarian crises, disaster risk and public health. (See Center on International Cooperation, "An integrated approach to prevention: the links between prevention — the 2030 agenda, and sustaining peace" (forthcoming)).

Affairs to coordinate on early warning, the Framework Team evolved into the first formal United Nations mechanism to "promote interagency collaboration on early preventive action".[6] The Framework Team came to include 22 United Nations departments and agencies whose working level representatives met regularly to undertake coordinated early warning on lower level, below-the-radar conflicts in order to prevent or mitigate worsening violence.[7]

10. Notwithstanding the contributions of the Framework Team, eventually it became clear that prevention efforts were still reactive, often ineffective, even incoherent, neither holistic nor strategic in preventing violence or avoiding recurrence, and lacked any significant links to human rights. The impetus to develop new institutional mechanisms and competences for prevention came from the independent Internal Review Panel on United Nations Action in Sri Lanka, which described a "systemic failure" of United Nations action in that country. This led to the establishment of the Human Rights Up Front initiative,[8] which created new United Nations institutional structures that put renewed attention on early warning (particularly of human rights abuses and violations) and improved the analytical capacity of the United Nations and its ability to respond quickly and coherently. The Human Rights Up Front initiative engaged principal-level actors in high-level analysis, ensuring greater coherence in strategy development and response. Senior management held periodic scanning sessions on regional and country situations. The implementation of the initiative has bumped up against challenges in extending its application from headquarters to the field and in shifting from its initial orientation of crisis-driven response to longer-term prevention.

11. As implementation of the Human Rights Up Front initiative commenced in 2014 and 2015, several high-level panels and processes were created to review the evolution and progress of major United Nations practices:

- The High-Level Independent Panel on Peace Operations, to undertake a periodic review of both peacekeeping operations and special political
- The Advisory Group of Experts on the Review of the Peacebuilding Architecture, which produced a report on 10 years of work since the establishment of the Peacebuilding Commission and the Peacebuilding Support Office
- The high-level review of the implementation of Security Council resolution 1325 (2000), to evaluate 15 years of implementation of that resolution.[9]

12. The June 2015 report of the High-Level Independent Panel on Peace Operations (A/70/95-S/2015/446) and the September 2015 report of the Secretary-General on the implementation of recommendations (A/70/357-S/2015/682) proposed a tripartite

[6] United Nations inter-agency framework team for preventive action, informational flyer (2012). Available from www.un.org/en/land-natural-resources-conflict/pdfs/FRAMEWORK_TEAM_FLYER-2July12.pdf.

[7] At its height in 2014, the Framework Team had a budget of about $2 million and five staff members working on early warning, supporting the deployment of peace and development advisers, and building the knowledge and skills of the United Nations with regard to prevention, with projects on conflict sensitivity, natural resources and conflict, human rights and conflict transformation. Although not insignificant vis-à-vis the organization's overall budget and staffing and, moreover, relative to needs, the Framework Team's budget and staffing were, to put it mildly, modest.

[8] See United Nations, "Rights up front: a plan of action to strengthen the United Nations' role in protecting people in crises — follow-up to the report of the Secretary-General's Internal Review Panel on United Nations Action in Sri Lanka" (9 July 2013).

[9] Radhika Coomaraswamy, *Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council Resolution 1325* (United Nations Entity for Gender Equality and the Empowerment of Women, 2015).

action plan, the first pillar of which was "renewed focus" and a "return to the fore" of prevention. In the report, the Secretary-General recommended "strengthening prevention and mediation efforts" through measures such as adding envoys, standby mediation experts and capacity for good offices, as a reflection of the "primacy of politics" in peace operations. To strengthen preventive capacities of United Nations country teams, the Panel recommended reinforcing the capacities of resident coordinators and the deployment of specialized staff, including peace and development advisers, human rights advisers and staff with mediation expertise.

13. In its strongest contribution to prevention, the report broke new ground, with the Panel arguing therein that militarized approaches to conflict prevention and protection of civilians, which were the usual default response to the risk of conflict, provided "only short-term and in some cases fleeting or illusory success while further exacerbating some of the grievances underlying the conflict" (A/70/95-S/2017/446, para. 14). The Panel went on to advocate that unarmed strategies "must be at the forefront of United Nations efforts to protect civilians" and recommended that United Nations "missions work more closely with local communities and national and international non-governmental organizations (NGOs) in building a protective environment." (ibid., paras. 86 and 105 (a)).

14. In its report, the Advisory Group of Experts on the Review of the Peacebuilding Architecture insisted on the importance of "conflict prevention (on which, in particular, the United Nations system needs to place much greater emphasis)" (A/69/968-S/2015/490, summary). Nevertheless, because the focus of the report lies elsewhere (peacebuilding), the Advisory Group never defined or articulated what aspects of prevention it meant or gave suggestions on how to emphasize, apply, integrate, mainstream, break down silos relating to, take unified action on or ultimately achieve conflict prevention in any concrete way.

15. Notwithstanding this, the Advisory Group, in its report, usefully reiterated that peacebuilding was not merely a post-conflict activity and defined it as a much broader concept that ran through "the complete cycle of United Nations engagement, from preventive action through deployment and subsequent drawdown of peace operations and beyond to post-conflict recovery and reconstruction" (ibid., para. 186). This idea was taken up in the hard-fought "sustaining peace resolutions" adopted by the General Assembly and the Security Council (resolutions 70/262 and 2282 (2016), respectively), in which both bodies emphasized the "importance of a comprehensive approach to sustaining peace, particularly through the prevention of conflict and addressing its root causes", reaffirmed "the primary responsibility of national Governments" and stressed "that civil society can play an important role in advancing efforts to sustain peace" (see preambular paragraphs of both resolutions).[10]

16. The 400+-page global study on the implementation of resolution 1325 (2000), entitled *Preventing Conflict, Transforming Justice, Securing the Peace*, documents how the empowerment of women contributes to strengthening peace operations, attaining peace agreements, improving humanitarian assistance, countering violent extremism and achieving sustainable peace.

17. Notably, the report emphasizes that an overreliance on an outdated militarized view of conflict and conflict prevention (resorting to peacekeeping once crises erupt) or a narrow view providing late-stage mediation and good offices, is but a poor substitute for non-militarized, long-term, much earlier governance and development approaches.

[10] The Special Rapporteur commends the fact that, in the resolutions, the General Assembly and the Security Council highlighted the importance of a comprehensive approach to transitional justice as part of the work to sustain peace. Nevertheless, the wording suggests an approach that focuses heavily on initiatives at the institutional level, mainly security sector reform.

18. Within the human rights pillar, the crucial reports on prevention are those of the Office on Genocide Prevention and the Responsibility to Protect. Most importantly, perhaps, is the Framework of Analysis for Atrocity Crimes, a risk assessment tool (A/70/741-S/2016/71, annex). The Framework provides a useful section on the legal basis for protection and an expansive understanding of how prevention can be achieved. The Framework specifically mentions strengthening the rule of law, institution-building, eradicating corruption, managing diversity and inclusion, strengthening civil society and achieving a "pluralistic media".

III. Towards a framework approach to prevention

19. United Nations documents on prevention are sometimes naturally more reflective of the institution's own understanding of what it has to do internally than of what needs to be done in the world. With few exceptions, such documents concentrate more on process than on substance. The organization's vast experience in the practice of prevention should enable it to produce comprehensive approaches. Indeed, if there is a common thread to all these documents, it is that prevention work needs to be broadened in focus and "upstreamed". There is no document, however, that illustrates in terms of content what this would mean, and especially none that puts flesh to the bones of the links between prevention and human rights on which there seems to be general consensus.

20. More than a dearth of knowledge and expertise, what hampers better results in the area of prevention is, first, the relative weakness of commitments and the consequent paucity of investments in this area and, second, the great disaggregation of knowledge and resources. (This is true both within and outside the United Nations.) While this disaggregation has resulted partly from the inevitable (and largely positive) processes of specialization — for there are, after all, technical dimensions to the aforementioned initiatives — as the discussions within the United Nations reviewed above reveal, there are also solid grounds for the aspiration to coordinate more effectively and to plan more comprehensively and strategically.

21. The fragmentation of knowledge in this area is revealed clearly by the fact that most of the truly effective preventive measures, such as general processes of institutionalization (including processes of State formation[11]), in particular processes of institutional reform (including initiatives to establish judicial independence or civilian oversight over security forces) and, especially, consequential policy decisions (such as changes in policing strategies) are rarely categorized as preventive tools. This is even more true in other fields such as economics, which arguably have an enormous impact on the risk of conflict, violence and human rights violations, but which are not always thought of in this light.[12]

22. As an illustration of the preventive potential of economic measures, the Special Rapporteur has pointed out in previous reports how the permanence of an abusive regime in power undercuts preventive aims. Rotations in power, however, become unlikely in countries where there is no well-established labour market, where government jobs are virtually the only regularly paid positions and where the alternative to being in Government is being in poverty (A/HRC/30/42, paras. 33-36).

[11] See Stephen Pinker, "Rates of violence in State and non-State societies", in *The Better Angels of Our Nature: Why Violence has Declined* (New York, Penguin Books, 2011).

[12] See United Nations and World Bank, *Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict* (Washington, D.C., World Bank, 2017), which places great emphasis on the conflict-generative potential of "horizontal inequalities", showing how marginalizing whole groups from access to economic opportunities correlates strongly with conflict and violence, and can be not only a violation of various rights in itself but also catalyse other forms of rights violations.

23. Discussions about prevention have been affected by various forms of reductionism, which this report would like to contribute to overcoming. The first one is the reduction (in practice, if not in theory) of prevention to a form of crisis response, as suggested by the (in some ways unobjectionable) emphasis on early warning. While a review of United Nations documents on prevention reveals the aspiration to expand on and upstream prevention work, operationally speaking, early warning and the still-challenging rapid response, continue to loom large in prevention practice. While there are good reasons to make sure that countries on the brink of violent conflict do not fall off that particular cliff, it should be acknowledged that the presence of anything that is capable of triggering an early warning system indicates that prevention work has started too late.

24. The difficulties generated by the disaggregation of knowledge and resources and by an overemphasis on crisis prevention (at the expense of more upstream work) can be mitigated by the adoption of a framework approach to prevention, the articulation of which is the main strategic interest underlying the present report.

25. The remainder of the present report is an effort to contribute to such an endeavour. It is an extended argument in favour of a comprehensive framework approach, written from the perspective of a mandate concerned with the redress and prevention of systemic rights violations.[13] The framework presented here is therefore at best a partial sketch of what a truly comprehensive framework would look like. For instance, while the present report reiterates the imperative need to address the many developmental deficits that often characterize countries where massive violations have taken place, the framework would have to be given the necessary content regarding issues that are essential for that purpose, including fiscal policy, labour law and anti-corruption legislation. Furthermore, even regarding the more justice- and rights-related areas which are its immediate concern, the framework concentrates on actions to be undertaken at the national level.[14] It is therefore silent about, for example, what could be done at the regional and the multilateral levels to increase the effectiveness of preventive work, a question which is deeply consequential.

26. A final comment about the nature of this exercise: A framework approach is not the same thing as a policy blueprint; indeed, there are reasons to doubt there is such a thing as a general prevention policy. Context matters, and it matters in a variety of ways; opportunities, just as much as needs, are not uniform across all contexts. Furthermore, this is true both synchronically and diachronically. Needs and opportunities are dynamic, so any given framework will contain elements that some countries will not need to address at a given point in time because the issue to which they relate is not immediately relevant, along with elements that some countries cannot address at the present time because they lack, for instance, the institutional capacities or resources. It goes without saying that, even regarding issues that a given country would consider both relevant and feasible for its situation, any truly comprehensive framework will also include a larger number of issues than it can address simultaneously, even assuming great institutional

[13] Violations which, the evidence suggests, fuel conflict. See, for example, Kjersti Skarstad and Håvard Strand, "Do human rights violations increase the risk of civil war?", *International Area Studies Review*, vol. 19, No. 2 (2016).

[14] Even regarding national-level initiatives, the framework is not exhaustive. Thus, although the present report makes reference to questions about the division of powers, this version of the framework does not address preventive work that could be done with parliaments or with political parties, the demise of which is arguably leading to a crisis in representative democracy which poses great risks of conflict and of violations. It also does not refer in detail to the preventive potential of independent human rights institutions. These omissions do not reflect judgments of value, but rather space constraints.

capacities.[15] Hence, a framework is a useful tool for making perspicuous the range of issues that effective prevention would call for, and even some of the relevant interconnections among them, but of course it is not something akin to a formula for exempting anyone from the need to exercise judgment.

27. Ultimately, in addition to filling a framework with content, i.e. with issues that are relevant for achieving effective prevention over time, work on this topic will require the development of criteria for relevance, feasibility and urgency. Models of prevention that take their lead from work in public health go part of the way towards doing this. For instance, the Center on International Cooperation has usefully argued that prevention work should distinguish between the following: universal prevention strategies, namely those initiatives which any country would find useful to implement and that bring "broad spectrum" benefits for peace, justice and inclusion at relatively low costs and that will usually have other social, environmental or economic benefits; "at risk" prevention strategies, or more specific initiatives that target groups, communities and countries that face elevated risks of conflict or that are experiencing heightened levels of violence and exclusion, or have low levels of resilience; and "in crisis" strategies, highly targeted interventions meant to prevent further deterioration, contribute to stabilization and build a foundation for recovery.[16]

28. Despite all the limitations of any given framework, the Special Rapporteur is of the view that for planning purposes it is better to have such a tool than to carry on without one. A framework approach to prevention presents a structure of interrelated elements and would ideally help guide decision-making towards comprehensiveness, but in an ordered and methodical way. Furthermore, having a comprehensive framework provides incentives to break down some of the silos that have constrained prevention work. We cannot continue talking abstractly about links between prevention, human rights and sustainable peace without having some concrete notion of what this involves.

29. The moment, furthermore, is auspicious. The (abstract) consensus on the importance of widening and upstreaming prevention has never been as solid. In addition to the reports referred to in the preceding section,[17] *Pathways for Peace*, which is the United Nations-World Bank flagship study on prevention, and, importantly, the comprehensive framework provided by the 2030 Agenda[18] provide the grounds on which a truly comprehensive framework for prevention can be developed. The present report is an effort to provide some content to such a framework, obviously from the perspective of this mandate. Needless to say, the framework will need to be augmented from other perspectives.

[15] Another dynamic element that should be kept in mind is that most of the issues that are relevant for prevention are of the sort that are not fully addressed once and for all: constitutional amendment procedures represent an acknowledgment of this point. Similarly, the requirements of tolerance in circumstances of great migration are very different from the requirements in circumstances without such migration.

[16] Center on International Cooperation, "An integrated approach to prevention" (see footnote 5).

[17] And others that could not be reviewed, including the 2005 World Summit Outcome (General Assembly resolution 60/1), and General Assembly resolutions, including resolution 57/337, in which the Assembly embraced a broad definition of prevention and included provisions on accountability, good governance, human rights, promotion of development, disarmament, education and gender equality, which it reiterated in its resolution 68/303.

[18] General Assembly resolution 70/1.

IV. Elements of a Framework Approach to Prevention

A. Interventions in the sphere of official State institutions

30. In previous reports, the Special Rapporteur has emphasized the preventive potential of the initiatives set out below, which range from the easily actionable to the more ambitious.

1. Civilian institutions

(a) Legal identity

31. At the most basic level, and as a background condition for effective prevention initiatives, transitional processes have confirmed the importance of establishing effective means for securing legal identity. Proof of legal identity becomes scarce during times of conflict through migration and displacement, the weakening of State services and the deliberate destruction of registries. Without proof of legal identity, the exercise of some rights and access to some State services become impossible. Legal identity is thus a gateway for the realization of other rights. Legal identity is important for having rights be respected, and as a ground for raising claims and obtaining redress. An effective and reliable national registry system, i.e. one that secures the confidentiality of personal data and that is sensitive to cultural differences, can also provide statistical data that will be useful for planning, implementing and monitoring service provision, including guaranteeing various rights and preventing the violation of such rights.

(b) Ratification and incorporation of international treaties

32. A very direct way of giving content to a prevention policy is to ratify international human rights instruments. It is well established that conflict correlates robustly with the violation of human rights. Moreover, there are good reasons to think that a negative feedback loop between human rights violations and conflict is easily established, whereby violations fuel conflict, which fuels more violations, and so on.[19]

33. Needless to say, no law is self-executing. Ratification, then, is nothing more than a signalling device, and as such it can be used in order to window dress a worsening human rights performance. Nevertheless, ratification, among other things, provides the ground on which advocacy can rest, and this is broadly seen as an important engine of change.[20]

34. In most countries, ratification will be meaningless without a strategy of incorporation, so the latter should also be an element of a prevention policy. Incorporating international criminal law into domestic systems also helps address issues of retroactivity and the principle of legality.

(c) Review of emergency and anti-terrorism legislation

35. Still in the domain of initiatives that involve mostly legislative reform rather than the creation or transformation of complex institutions, other legal reforms that may be a part of a broad prevention framework should include the review of emergency, anti-terrorism and other security-related legislation to verify that is it

[19] See, for example, James Fearon, "Governance and civil war onset", working paper (Washington, D.C., World Bank, 2010), and Skarstad and Strand, "Do human rights violations increase the risk of civil war" (see footnote 13).

[20] *The Persistent Power of Human Rights: From Commitment to Compliance*, Thomas Risse, Stephen Ropp and Kathryn Sikkink, eds. (Cambridge University Press, 2013).

fully compliant with human rights standards. Authoritarian regimes, regimes in conflict and, increasingly, regimes involved in real or imagined "wars on terrorism" adopt legislation that often bears a tenuous relationship to the risks that supposedly justify it. While of course countries have not only the right but also the obligation to guarantee the security of those within their territory, they are obliged to do so within the boundaries of legality. In many countries, anti-terrorism legislation becomes an incentive for the violation of various rights. Reviewing such legislation is a not particularly onerous prevention measure.

(d) Judicial reforms

36. In their analysis of the factors that contribute to massive human rights violations, a good number of truth commissions have paid extensive attention to the judiciary and, in their recommendations concerning not only redress but also non-recurrence, they have included various aspects of judicial reform, the three most important of which are: (a) screening or vetting judicial personnel; (b) strengthening judicial independence (both the independence of judges and the independence of the judiciary as an institution); and (c) increasing the competence of the judiciary in areas relevant to preventive purposes, including familiarity with international human rights law and humanitarian law, and strategies to deal with systemic crimes.

(e) Constitutional reforms

37. At a higher level of complexity (not least in requiring increasing institutional coordination), transitional processes have also included different forms of constitutional reforms which can be considered part of a general preventive framework. The simplest types of such reform are the removal of discriminatory provisions and the introduction of mechanisms of inclusion.

38. Some countries with a history of massive human rights abuses, as part of non-recurrence efforts, have adopted a bill of rights. Although the effectiveness of such a measure will always depend on the strength of the courts that interpret these texts — an illustration of the way in which preventive initiatives can relate to one another — the articulation of a list of fundamental rights that a State commits itself to guaranteeing, respecting and promoting has a preventive potential that can be considerable. In countries with a history of ethnic or religious divides, where minorities have suffered systematic discrimination and have ended up carrying the burdens of "horizontal inequalities", an explicit bill of rights can act as a disincentive to marginalization and in this way remove a conflict factor.

39. The preventive potential of this form of constitutional reform likely depends not only on the final outcome, i.e. a text, but also on the process of articulating the bill of rights. The more inclusive and deliberative the process is, the more reasonable it is to assume that the bill of rights will have some purchase with all relevant stakeholders.

40. Some countries undergoing transitions have also reformed their constitutions so as to strengthen the separation of powers, in the belief that a lack of constraints on the executive contributed to past violations.

(f) Establishment of a constitutional court

41. Following the lead of Germany after the Second World War, most countries that transitioned from authoritarian to democratic regimes in "the third wave" of democratization introduced a constitutional court. In addition to emphasizing the importance of fundamental rights (by distinguishing the adjudication of matters involving such rights from the adjudication of "routine" matters of law carried out

by ordinary courts), the establishment of a constitutional court provides a neat solution in countries where massive violations have occurred or where judges cannot be trusted but cannot be fired either. Creating a new court that is concerned precisely with fundamental rights, and populating it with a different cohort of people, solves many problems.

42. Obviously, the most ambitious of the constitutional projects that can be considered a part of a prevention policy is the adoption of a new constitution. It may be that a history of conflict has provided evidence that the existing constitutional dispensation is incapable of resolving important social challenges. Post-conflict countries tend to adopt constitutions that are expansive in terms of rights and guarantees, that guard the division of powers and, lately, that shift from inquisitorial to prosecutorial systems. Because the immediate post-conflict period may present difficulties for the adoption of an entirely new constitution, some countries have adopted transitional constitutions to facilitate more gradual and more inclusive changes.

43. None of the initiatives mentioned above are sufficient, on their own or collectively, to guarantee non-recurrence and in this sense they are not fail-safe prevention tools. It is relevant to keep in mind that the effectiveness of all legal and institutional reforms, including constitutional reforms, depends on their being taken seriously both by operators and by citizens. Arguably, poor implementation is as serious a problem as poor design.

2. The security sector

44. In the field of transitional justice, there are experiences regarding the reform of the security sector from which a comprehensive prevention framework can profit. Indeed, discussions of prevention in transitional justice circles were for a long time reduced to discussions about security sector reform, and in particular the vetting of the security forces.[21]

(a) Vetting of personnel

45. Vetting the personnel of the police, the armed forces and the intelligence services can, in fact, make an important contribution to prevention, provided that it is meaningfully differentiated from purges. Vetting, as the term has come to be used, far from meaning massive dismissals on the basis, for example, of mere membership in a party or organization or, even less frequently, on the basis of ascriptive factors, denotes a formal process to screen the behaviour of individuals and assess their integrity on the basis of objective criteria, so as to determine their suitability for continued or prospective public employment.[22]

46. Whereas in the transitional justice context a good part of the discussion about vetting has been spent (or misspent) on debates about its deterrent potential and on its potential contribution to closing the "impunity gap", for the purposes of a prevention framework the important point is that vetting arguably contributes to the dismantling of networks of criminality (see A/70/438).

47. It should be conceded that vetting has turned out to be very challenging in post-authoritarian processes, and even more so in post-conflict settings, given the

[21] Three out of the six principles for the protection and promotion of human rights through action to combat impunity, which address guarantees of non-recurrence, deal with vetting. See E/CN.4/Sub.2/1997/20/Rev.1, principles 40-42. See also S/2004/616, paras. 52-53, and A/62/659-S/2008/39.

[22] This understanding of vetting was taken up by the Secretary-General in his 2004 report on the rule of law and transitional justice in conflict and post-conflict societies. See S/2004/616, para. 52.

prominence that armed forces retain in such contexts. The difficulties can be mitigated by adopting "soft" forms of vetting,[23] including those which involve mild sanctions (e.g. offering individuals the opportunity to resign with little or no public disclosure or foregoing harsh limitations on prospective employment) or by adopting "indirect" forms of vetting (e.g. offering incentives for retirement or imposing a reduction in the mandatory retirement age, as in post-transition Spain) or by adopting a system like that in Argentina, which allows civil society organizations to make submissions to parliamentary debates concerning promotions (which gives those with shady pasts a great incentive not to submit their names for promotions, eventually leading to their resignation).[24]

(b) The definition of roles

48. Even where vetting is possible, however, it does not come close to exhausting the security sector reform measures that have significant preventive potential and that should therefore be considered for inclusion as elements of a comprehensive prevention framework.

49. For example, the role of the police, the military and the intelligence services should be defined precisely, ideally in the constitution. In many countries that have seen conflict or that are at risk of conflict, there is great ambiguity in the definition of the role of the different parts of the security services. Militaries have been pulled into policing functions that are not really theirs, such as participating in the "war on drugs", fighting organized crime within their own borders, undertaking counter-insurgency and counter-terrorism operations, and even taking part in riot control.

50. The price that is paid, more often than not, is that the armed forces and the intelligence services become politicized, are exposed to corruption and other forces that distort their own understanding of their social role, and are placed in situations for which they are not suitably trained or equipped. As if this were not serious enough, another frequent consequence is the corresponding weakening of police forces, whose training and equipment, and proximity to local populations, in theory make them better placed to play such a role. Police forces then risk becoming ensnared in corruption and other forms of criminality, deepening a spiral of dysfunction that in turn further fuels the attractiveness of using the military for such purposes.

51. A robust prevention agenda would therefore include a careful definition of the external role of the military and intelligence services, the internal role of the police with regard to public order and the very restricted circumstances in which these lines can be crossed. It would also include a clear definition of the role of the intelligence services in both the internal and the external domains.

(c) Rationalization of forces

52. Periods of conflict and of serious risk of conflict also tempt governments to create special security bodies, including intelligence services, with partially overlapping mandates and unclear lines of reporting and command. This includes

[23] It goes without saying that no form of vetting and, *a fortiori*, none of these soft forms satisfies independent legal obligations concerning the criminal investigation, prosecution and punishment of certain types of violations and abuses.

[24] One particular advantage of the Argentinean approach was that, strictly speaking, this was not designed as a vetting programme, but rather stemmed from parliamentary reforms allowing for public participation in debates. See Valeria Barbuto "Strengthening democracy: impugnación procedures in Argentina", in *Justice as Prevention: Vetting Public Employees in Transitional Societies*, Alexander Mayer-Rieckh and Pablo de Greiff, eds. (New York, Social Science Research Council, 2007), and A/70/438.

the frequent creation of non-State paramilitary groups. A serious prevention effort would also eventually include, as a consequence, an effort to rationalize and streamline forces, to clarify reporting and command lines and, in the case of non-State paramilitary groups, to disband such groups in ways that avoid the creation of spoiler groups, for example, through the effective use of disarmament, demobilization and reintegration programmes, which may include the integration of some of these forces (after vetting them for serious violations and abuse) into statutory security institutions.

53. The rationalization of the forces for preventive purposes should also include tying military expenditures to objective risk assessments. Military expenditures in countries that have experienced conflict or that are at risk of conflict frequently outstrip real needs, are more often than not shrouded in secrecy, almost invariably end up becoming sources of patronage (one of the many incentives for the militarization of politics so frequent in such contexts) and easily lend themselves to corruption and other forms of violations. Considering that this is a budgetary line that frequently exceeds investment in education, health and infrastructure combined, introducing transparency and more effective civilian oversight may present significant preventive pay-offs.

(d) Civilian oversight mechanisms

54. Strengthening mechanisms for civilian oversight over the security services, including intelligence services, deserves special attention from a preventive standpoint. Of course, this refers to civilian control and oversight under the law, in accordance with all constitutional provisions and in full compliance with all relevant international standards. The aim of such oversight is not always best captured in terms of reduction (e.g. of autonomy or size of forces) but rather in the professionalization of the services, including a sensible division of labour between different forces and branches, and the prevention of a spillover of power relations into domains that should be occupied by others, politics and the economy included.

(e) Defining the jurisdiction of military courts

55. One of the frequently observed spillover effects of military power is an encroachment on the sphere of justice. A comprehensive framework for prevention should also examine carefully the jurisdiction of military courts. While there are good reasons to have military courts, given that military personnel have to abide by rules that civilians are normally exempted from, the expansion of the jurisdiction of military courts to try civilians or to try members of the military for crimes other than military crimes contravenes international law, in and of itself constitutes a violation of rights and is one of the most prevalent means of shielding violations from view. From the standpoint of prevention, curtailing the jurisdiction of military courts is an important move which should not threaten the operation of truly professional security apparatuses.

(f) Eliminating military "prerogatives"

56. Another set of spillover effects of conflict and great risks of conflict is the creation of military "prerogatives", which often include control over various aspects of politics and the economy. These include "tutelary powers", such as the authority to appoint members of the legislature (25 per cent in Myanmar, for example), which, in conjunction with supermajority requirements, guarantees to the military veto power over law-making and constitutional reforms. Those powers may also include outsized participation in security councils, with more than advisory powers, giving the military effective control over crucial issues, sometimes including when to declare a state of emergency (with the corresponding suspension of, and threats

to, fundamental rights); guaranteed financial resources, with little oversight or transparency; and loosely regulated or unregulated opportunities for military industries and for members of the military to participate in businesses. Those prerogatives — "authoritarian enclaves" or areas of autonomy beyond control — should be eliminated as part of a preventive strategy. They weaken civilian oversight and control of the armed forces, are detrimental to economic development, subvert democracy and the rule of law, and undermine transparency in governance.

57. The tendency of militaries to carve out "reserve domains" in situations of conflict or grave risk of conflict is aided by the relative dearth of technical competence in civil society regarding defence policy issues. Meaningful civilian oversight over the military depends on decisively disputing its alleged monopoly of expertise in defence issues, including strategy, budgeting and acquisitions. A policy to prevent human rights violations would be significantly strengthened if it paid attention to the conditions under which effective civilian oversight of military forces could take place. The informed involvement of civil society actors in a security sector reform process significantly shapes its direction and scope. This is indeed a useful reminder of the important role civil society can play in prevention, a topic to which not enough attention has been paid.

B. The preventive role of civil society

58. While it is important to counter the tendency to reduce prevention discourse to the reform of security sector institutions — and the foregoing was an attempt to do this — there is in prevention discussions and practice a lingering type of reductionism that also needs to be opposed, one that concentrates exclusively on official State institutions. Most discussions about prevention and related programming leave out altogether the crucial preventive role of the institutions of civil society,[25] or assign to them narrow and predictable roles such as monitoring and reporting. As important as monitoring and reporting might be, they do not capture either the plethora of preventive roles that civil society can play, or the fundamental "social mechanism" through which a strong civil society serves a preventive function.

59. In the domain of rights, civil society organizations (not to be understood solely in terms of NGOs) can claim important victories, including the abolition of slavery; desegregation in many parts of the world, including the United States of America and South Africa; the expansion of voting rights in the nineteenth and early twentieth centuries and, especially, successful democratizing transitions in the latter part of the twentieth century; important successes in the fight against impunity, particularly in post-authoritarian transitions; and huge advances in lesbian, gay, bisexual, transgender and queer rights.

60. It should be remembered, however, that "civil society" is not necessarily synonymous with everything that is morally, legally and politically desirable. In each of the struggles just mentioned, there was a sector of civil society that stood in opposition. Thus, there were of course such things as a pro-slavery civil society, segregationist movements, settler civil society which mobilized against decolonization,

[25] Jürgen Habermas' definition of civil society is the one followed in the present report: "Civil society is composed of those more or less spontaneously emergent associations, organizations, and movements that, attuned to how societal problems resonate in the private life spheres, distil and transmit such reactions in amplified form to the public sphere. The core of civil society comprises a network of associations that institutionalizes problem-solving discourses on questions of general interest inside the framework of organized public spheres." See Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, MA, Massachusetts Institute of Technology Press, 1996), especially chap. VIII.

majorities that sometimes supported authoritarian takeovers, and ample social sectors that continue to oppose lesbian, gay, bisexual, transgender and queer rights. Civil society organizations of different types have participated actively in the commission of violations and atrocities, not least in the lead-up to the Nazi victory in Germany and during the Rwandan genocide, events during which media instruments were widely used. Currently, we are witnessing a significant mobilization of civil society in favour of populist, xenophobic and even racist agendas that are far from rights-promoting or rights-enhancing.

61. Acknowledging that not all sectors of civil society are alike should not obscure the fact that civil society has generally been the engine of progress in the domain of human rights. Indeed, such acknowledgment provides even less reason for scepticism about civil society in general — which after all, by its very nature, is diverse and pluralistic — than the justification offered for scepticism about State institutions in general that such institutions can be put to abusive ends.

62. Empirical evidence suggests that there is a robust correlation between strong and autonomous civil society and positive human rights indicators. Part of this results from the fact that civil society aggregates and magnifies voices, in the process signalling both loudly and clearly to Governments where citizens' preferences lie, a signalling function that is not merely "informational" but that also has the implicit character of a claim. As the author of a study involving 60 countries summarizes his findings: "The strength of civil society prior to transition and its density post-transition not only play a significant role in the deepening of political freedoms and civil liberties among transitional citizens, but also lead to better institutional performance."[36]

63. Aggregation and magnification can thus be considered important social mechanisms through which civil society plays its role of contributing to steering the use of public power. This, in itself, may give effective civil societies a preventive edge, for civil societies capable of effective aggregation and magnification generally will not admit certain types of treatment. In other words, the relationship between civil society and authorities in a country with strong civil society organizations is not purely reactive but rather also anticipatory.

64. There is another mechanism, of a very general nature, by which civil society may exercise a preventive function. Perhaps this is best seen *a contrario*: it is well known that one of the (intentional) effects of the abusive exercise of State power is the breaking of social bonds, the isolation of people from one another. In a previous report, the Special Rapporteur illustrated this phenomenon by recalling a description of the "avoidance strategies" adopted by Argentineans during the dictatorship: "People abandoned, first, their political activities; second, they abandoned their political beliefs. They reduced associational activities and denied any evidence that inhumane practices were being carried out. Members of groups that were political targets of State terror cultivated deliberate ignorance about what was going on. People adopted selfish strategies of survival."[37] There is nothing peculiar about the Argentinean case in this respect. Such an effect is instrumental to the aim of preserving power through terror. The core effect of what has been called

[36] Rollin F. Tusalem, "A [illegible]: The role of civil society in third- and fourth-wave democracies", *International Political Science Review*, vol. 28, No. 3 (2007).

[37] See A/68/345, para. 19, citing Jaime Malamud-Goti, *Game Without End: State Terror and the Politics of Justice* (University of Oklahoma Press, 1996).

"disarticulating power" is to hamper social coordination, which is necessary for any sort of organized opposition.[28]

65. Thus, if the sustainability of terror depends upon the disarticulation of civil bonds, it is not far-fetched to think that the exercise of terror will be more difficult in the first place in contexts in which thick and diverse bonds already tie people to one another. Indeed, this is also an extension of the idea that the predictability of the signalling function of a strong civil society can also be thought to play a preventive role. The relevant social mechanism that can be thought to have a preventive effect, then, is a sort of aggregation, this time not of views, as in the argument above, but of people, or more precisely of bonds of concern. Those who know that people are not alone are more reluctant to abuse individual members of the group.

C. Strengthening civil society

66. Be this as it may, civil society, as mentioned above, has been acknowledged to contribute to prevention through very concrete means such as advocacy, monitoring, reporting and diverse reconciliation initiatives, among other things. For these various reasons, a framework approach to prevention should include measures to strengthen civil society and to increase its autonomy.

67. As in the case for institutional reform, it is the view of the Special Rapporteur that it is advantageous to present a range of options with different degrees of complexity, from the easily actionable to initiatives that are more resource intensive and require complex forms of coordination or a sophisticated institutional set-up. Because part of the nature and function of civil society is to be independent, even "uncontrollable," it is also important to acknowledge that civil society will not respond to policy initiatives as if it were part of the network of official institutions that are more or less dependent on hierarchical power for direction.

1. Repealing laws that limit civic space

68. Nevertheless, civil society is obviously responsive to policy initiatives, as is clearly presupposed by the recent spate of laws adopted by countries around the globe to limit in various ways the operation of civil society organizations.[29] These laws impose onerous registration and reporting requirements and introduce barriers to operational activity, giving authorities not only virtually unlimited oversight powers, but also the power to veto individual elements of work plans and, generally, to restrict access to funding and impose limits on the rights to free speech, expression and peaceful assembly. An easily actionable contribution to strengthening civil society organizations could involve the repeal of such legislation.

2. Establishing platforms, coalitions or networks

69. In many countries, there are individual civil society organizations, especially NGOs with a very high degree of technical competence. Nevertheless, for various reasons, including deep social cleavages, which may involve class, ethnicity,

[28] As Hannah Arendt put it: "Totalitarian government, like all tyrannies, certainly could not exist without destroying the public realm of life, that is, without destroying, by isolating men, their political capacities". See Hannah Arendt, *The Origins of Totalitarianism*, 2nd ed. (New York, Meridian Books, 1958).

[29] According to one report, "between 2004 and 2010, more than 50 countries considered or enacted measures restricting civil society. Since 2012, more than 90 laws constraining the freedoms of association or assembly have been proposed or enacted." See Douglas Rutzen, "Aid barriers and the rise of philanthropic protectionism", *International Journal of Not-for-Profit Law*, vol. 17, No. 1 (2015).

religion or a history of conflict and the attendant low levels of trust left in its wake, civil society organizations, even those on the same side of an issue, have a hard time working together. In such contexts, it is difficult for civil society to achieve its typical aggregating effect and, therefore, it ends up dissipating its potential impact.

70. Networks, platforms, coalitions and alliances of independent civil society organizations have been formed in many countries to address this problem. There is no blueprint for such organizations, which indeed can have different degrees of formality. Structures that allow for information-sharing and exchanges that may facilitate the formation of consensus positions, that increase the participation of those who may be farther afield (e.g. grass-roots organizations outside the capital or other urban areas) and that permit some level of coordination of action have been found in many countries to realize the potential of collective action, which is by its nature more powerful than the isolated action of the constitutive parts of civil society.

71. Governments have sometimes tried to establish similar structures in order to manipulate civil society organizations. In assessing the potential contributions of civil society to issues such prevention, not only the strength but also the autonomy of civil society are crucial. The networks at issue here must be totally independent from Governments, created and run entirely on the initiative of civil society.

3. Creating forums

72. A powerful incentive for the development of civil society is to demonstrate that there is a point to the efforts it always takes. Official forums of consultation, especially when they are not mere "talk shops", can provide a powerful incentive for the strengthening of civil society, and not just in a general sense, but also with specialized expertise. For example, rules that allow civil society to make submissions and participate in legislative discussions not only manifest and foster the virtues of inclusiveness and transparency but also provide a powerful reason for civil society to strengthen its capacities.[70]

4. Fostering an enabling environment

73. Reiterating that civil society by its very nature is not part of the State and that therefore it cannot be expected to respond to State initiatives as though it were, ultimately the best way for the State to strengthen civil society is to foster an enabling environment. In past reports, the Special Rapporteur has made reference to: (a) the active promotion of the fundamental freedoms of expression and opinion, peaceful assembly and association, and religion; (b) the establishment of an educational system that provides opportunities to develop not just marketable skills but also critical thinking; and (c) the preservation of traditions of openness, transparency and consultation, as some of the elements of such an environment.[71]

[70] See the Special Rapporteur's reports on victim participation and on national consultation processes (A/HRC/34/62 and A/71/567).

[71] See A/HRC/30/42. The Global Capability Index to measure the enabling environment of civil society, developed for the World Alliance for Citizen Participation (CIVICUS), perhaps the most comprehensive effort, provides elements that could be integrated into a comprehensive prevention framework. The Index takes an enabling environment for civil society as a composite of three different sub-environments: socioeconomic, sociocultural and governance. A governance environment that enables civil society would, for example, be one which would fare well in terms of (a) civil society infrastructure (measured in terms of the organizational capacity, effectiveness and financial viability of civil society organizations), (b) policy dialogue between civil society and State organs, (c) corruption, (d) political rights and freedoms, (e) associational rights, (f) rule of law, (g) personal rights, (h) the legal framework for NGOs and (i) media freedoms. There is significant overlap between these factors and the contents of a possible prevention framework as presented in the present report and in earlier ones on non-recurrence by the Special Rapporteur.

74. Taking seriously the idea that a strong and autonomous civil society has an important role to play in prevention, and that the strength of civil society can be fostered but not produced through official initiatives, will have wide-ranging repercussions, for example, in budgeting, planning and in the way that international cooperation supports prevention initiatives. For instance, taking this idea seriously would have to be reflected in increasing the diversity of cooperation partners and making assistance less State-centric, as well as in the time horizons of cooperation and the indicators selected to assess impact, some of which would have to be "indirect", measuring not mere outcomes but also changes in the environment in which civil society operates.

D. Interventions in the cultural and the individual spheres

75. A truly effective prevention policy will not only concentrate on institutions — even if the focus is widened to include the non-official, civil society sector — but also include interventions aimed at making changes in the domains of culture and personal dispositions. Prevention, after all, cannot be reduced to a technocratic exercise of clever institutional engineering. There are cultural dimensions to violence and conflict, just as there are individual dispositions that incline people towards or away from violence.

76. Both culture and individual dispositions are functionally designed to provide stability and continuity, and therefore they are not open to immediate change. That does not mean, however, that they are immutable. Like changes in civil society, cultural and personal transformations are best achieved indirectly, by way of sustained support over the long run, rather than through narrowly focused, short-term interventions.

77. The present report is not the place to exhaustively list the sort of interventions in the cultural and personal spheres that should be part of a broad prevention platform. Its main interest is in insisting upon the importance of combating one last form of reductionism: the one that presumes a prevention agenda to be exhausted by interventions in the domain of institutions.

1. Education

78. Three obvious elements of a comprehensive prevention framework should be education, arts and culture, and archives and documentation. Education, both formal and informal, because of its formative potential, can be used both to assuage and to fuel resentments. Access to educational opportunities can deepen or help resolve horizontal inequalities. The specific content of educational experiences can fan grievances or foster attitudes and ways of resolving them. Pedagogical methods can produce tolerant or intolerant dispositions. Additionally, education is a bridge between the institutional, the cultural and the personal spheres. It is unlikely that any prevention strategy will take root without long-term supportive changes in education.

The index formulates in greater detail what it calls the factors that make up an enabling sociocultural environment for civil society (albeit not in ways that obviously lend themselves to policy interventions). These include: (a) the propensity of individuals to participate in different modes of collective action, from petitions to peaceful demonstrations, (b) tolerance of different ethnic and religious groups, (c) trust in civil society organizations and (d) solidarity, as expressed by giving and volunteering. The index also formulates what it calls the socioeconomic environment enabling civil society. The relevant indicators it picks are: (a) educational achievements, (b) communications (with a special focus on access to the Internet), (c) levels of economic equality and (d) gender equality. The materials that accompany the index clarify the indicators and sources of data. The present report is interested in fostering policies and the integration of policies that may lead to positive changes in the index.

2. Arts and other cultural interventions

79. Arts and other cultural interventions, including museums, exhibitions, monuments, and theatre performances, are important means of generating empathy and solidarity, which among other things can foster a demand for justice and ultimately strengthen sustainable processes of social integration. Artistic and cultural interventions are ideally suited to making visible not only victims but also the layered, complex and long-term consequences of victimization, which often ripple out across generations and communities.

3. Archives and documentation

80. Finally, the way countries archive documents and ensure access to their archives says a lot about their attitudes toward inclusion, transparency and even due process. Access to well-preserved and protected archives is an educational tool to combat denial and revisionism, as important for history education as for dimensions of institutional reform. Particularly in periods in which opinions in the media, including social media, are increasingly seen to be untethered from any factual basis, the effective use of archival documentation can prevent the manipulation of "memory" to instigate conflict.

V. Conclusions and recommendations

Conclusions

81. There are reasons to celebrate the increased interest in prevention both within the United Nations system and outside it. Not the least because there are harms that cannot be undone, and others that can be undone only at a huge cost, it would be better if we could prevent some of the violations from happening in the first place. Redress is crucial, but obviously redress alone is not the ideal outcome.

82. The interest in prevention within the United Nations system is not new. Both conceptual and operational work has been attempted in the past with different degrees of success. A review of such work provides grounds for the following conclusions: first, much more work needs to be done; second, a consensus is emerging about broadening the scope and upstreaming prevention work; third, operationally neither the United Nations system nor anyone else has the required degree of coordination. Both the United Nations system and others continue to operate on the basis of assertions of general links between topics deemed relevant for prevention (e.g. human rights and development) without any detail about the nature of those links or of what they imply programmatically.

83. In addition to relatively low investments in prevention, the greatest obstacle to the design of effective prevention programmes is the "siloization" of knowledge and expertise. The problem is not so much a lack of knowledge about how to achieve preventive aims, but rather that this knowledge and expertise are too disaggregated, and efforts either too dispersed or, as happens all too frequently, concentrated on crisis prevention, at which point they are arguably too late.

84. The present report advocates for the adoption of a "framework approach" to prevention. A broad framework on its own may not be sufficient to break all silos open, but it provides both an overview of the breadth of initiatives that need to be a part of effective prevention and an occasion to clarify the relationship between the elements of a comprehensive prevention policy. A framework, while not a formula or a blueprint, nonetheless facilitates planning and coordination, and this alone makes the adoption of one worth considering.

85. Additionally, the report contains proposals regarding some content for a broad prevention framework, based on experiences learned in the field of transitional justice, particularly its efforts to guarantee non-recurrence. While some of the measures are familiar, their placement in a more comprehensive framework is novel. Moreover, because the Special Rapporteur is convinced that significant and sustainable social transformation is not simply a matter of institutional design, as important as that might be, but also of transformation in culture and in personal dispositions, the report contains a proposal to include in a prevention framework elements that are usually left out, including measures to strengthen civil society, as well as some elements in the sphere of culture and personal dispositions.

Recommendations

86. **The Special Rapporteur supports the call for greater work in the domain of prevention. In order to increase the effectiveness of preventive efforts, he also supports the idea that the scope of prevention work should encompass more than crisis prevention, and that preventive efforts need to be upstreamed.**

87. **Nevertheless, neither expansion nor upstreaming should be done haphazardly. The Special Rapporteur urges those involved in prevention work to think about the relationship between the discrete parts of a broad preventive agenda.**

88. **In order to facilitate the opening of silos of knowledge and expertise which have characterized work in this area, the Special Rapporteur urges the adoption of a "framework approach" that would allow for the systematic and ordered planning of a broad prevention policy.**

89. **The Special Rapporteur encourages those responsible for the design of prevention policies to consider as elements of such policies a range of initiatives which, in the sphere of official State institutions, include promoting legal identity; ratifying and incorporating human rights treaties; carrying out legal reforms to ensure that counter-terrorism and emergency laws are fully compliant with human rights standards; implementing judicial reforms to strengthen the independence of the judiciary and to increase its competencies in topics relevant to prevention, including international human rights law; and considering constitutional reforms, including the adoption of a bill of rights and the establishment of a constitutional court.**

90. **Regarding the security forces, the Special Rapporteur encourages those involved in the design of prevention policies to include as elements of such policies personnel vetting, a constitutional definition of the role of each force (including the intelligence services), the rationalization of forces, the strengthening of mechanisms of civilian oversight and the elimination of military prerogatives, among other things.**

91. **The Special Rapporteur urges those designing prevention policies to recall the crucial contribution that civil society can make to that end, by means that go beyond familiar (and important) functions such as advocacy, monitoring and reporting. A prevention policy would therefore profit from measures to strengthen civil society, including the repeal of legislation that hampers the operation of civil society organizations; the implementation of legal empowerment programmes; the establishment (by civil society actors) of platforms, coalitions, alliances and networks; the adoption of laws that enable meaningful participation by civil society in different forums, including legislative ones; and the cultivation of an environment conducive to civil**

participation, with adequate protection of the rights to association and expression, among others.

92. **Finally, because prevention is not simply a matter of institutional engineering, the Special Rapporteur urges those in charge of designing prevention strategies to also include interventions in the cultural sphere and in the domain of personal dispositions that are supportive of the full realization of human rights. Education, arts and other cultural interventions, including memorialization and museums, and investments in archives and documentation will all contribute to nourishing cultures and individuals that can sustain prevention aims over time, including those periods during which institutions cannot be solely expected to guarantee the full realization of rights.**

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